

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

THOMAS P. LEBON,)	
)	
Petitioner,)	
)	
v.)	No. 4:14CV993 JCH
)	
STATE OF MISSOURI,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

This matter is before the Court on petitioner’s application for writ of habeas corpus under 28 U.S.C. § 2254. Petitioner challenges his current confinement in the St. Louis City Justice Center, and he seeks an order directing the State of Missouri to overturn his state court conviction and release him from custody.

Petitioner has not yet briefed a direct appeal of his conviction or filed a motion for post-conviction relief in the Missouri courts on these issues. Because petitioner has not presented these issues to the Missouri courts, his petition must be dismissed for failure to exhaust his available state remedies. 28 U.S.C. § 2254(b)(1)(A); Rule 4 of the Rules Governing Habeas Corpus Cases Under § 2254.

Background

On June 6, 2014, petitioner was sentenced to eight (8) years’ imprisonment for burglary in the second degree, to run concurrent with a seven (7) year sentence for possession of burglary tools and a one (1) year sentence for theft. *See State v. Lebon*, Case No. 1222-CR02756-01 (22nd Judicial Circuit). In his application for writ of habeas corpus, petitioner seeks a “judgment of acquittal notwithstanding the verdict of the jury, or in the alternative motion for a new trial.”

The Court notes that the docket in petitioner's underlying state criminal case, according to Mo.Case.Net, <https://www.courts.mo.gov/casenet.cases.searchDockets/>, shows that petitioner filed a notice of appeal on the date of his sentencing, on June 6, 2014. There is no indication that petitioner has briefed his direct appeal or yet filed any motions for post-conviction or habeas relief in state court prior to bringing the instant petition in federal court.

Discussion

Rule 4 of the Rules Governing § 2254 Cases in the United States District Courts provides that a district court shall summarily dismiss a § 2254 petition if it plainly appears that the petitioner is not entitled to relief.

Under 28 U.S.C. § 2254(b)(1),

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts
of the State . . .

Because it does not appear that petitioner has exhausted any of his available state remedies, the Court will order dismiss the instant petition, without prejudice, pursuant to 28 U.S.C. § 2254(b)(1)(A), for failure to exhaust available state remedies.

Accordingly,

IT IS HEREBY ORDERED that petitioner's application for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DISMISSED** without prejudice.

IT IS FURTHER ORDERED that the Court will not issue a certificate of appealability.

Dated this 1st day of July, 2014.

/s/Jean C. Hamilton

JEAN C. HAMILTON

UNITED STATES DISTRICT JUDGE